

The Iraqi prison abuse scandal is an opportunity for America to come together. Regardless of whether you are Republican or Democrat, we see this problem the same. If we work together, we can win. We will work, I am 100-percent certain of that. The only person who can defeat us is ourselves.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. What is the parliamentary situation?

The PRESIDING OFFICER. Morning business with a 10-minute time limit.

#### JUDICIAL NOMINATIONS

Mr. HATCH. Madam President, over 6 weeks ago, the Senate minority instituted what resulted in a virtual freeze on the Senate's constitutional responsibility to provide advice and consent on the President's nominees.

This is troubling to me for a variety of reasons. Nevertheless, I am slightly encouraged by the movement on a few executive nominations last week, even though I remain extremely concerned about the current and continuing freeze on judicial nominations.

The last time the Senate confirmed a judge was on March 12, about 2 months ago. So it is past time for a rollcall.

Yesterday, in addition to being Mother's Day, marked the beginning of the fourth year since the President sent to the Senate his first nominations to the Federal judiciary. Back on May 9, 2001, President Bush nominated 11 outstanding individuals to serve on the bench. The Senate has confirmed eight of those nominees. One has withdrawn, and two are still pending.

I commend Senator DASCHLE and other colleagues across the aisle, especially my friend Democratic member of the Judiciary Committee, Senator LEAHY, for working with us and the administration in confirming to date 173 of President Bush's judicial nominations. As Senator LEAHY frequently reminds us, 100 of those nomination confirmations took place during his tenure as Judiciary Committee chairman from mid-2001 through 2002.

But more work can and needs to be done so that the American public can enjoy the benefits of a more fully staffed Judiciary. Unfortunately, the old saying, "justice delayed is justice denied" is true. The Senate needs to consider the judges on the calendar and give each one an up-or-down vote, as the Constitution requires. At present, there are 32 nominations for our district and circuit courts pending before the full Senate. Among this group are 22 men and 10 women. This is an outstanding group of candidates with diverse backgrounds. These candidates include a number of impressive minority candidates such as Justice Janice Rogers-Brown of the California Supreme Court, who has been nominated to serve on the influential Circuit Court of Appeals for the District of Columbia.

The nominees being held in limbo are highly qualified. Each and every one of them deserves the consideration of the full Senate. They include sitting State supreme court justices, State and Federal trial judges, and distinguished members of the bar. Many have served as judicial clerks in our Federal trial and appellate courts and in the Supreme Court. Others have served at the highest levels of all three branches of Government. All have distinguished academic records. Twenty-four of these nominees received a Well Qualified rating from the American Bar Association. Fourteen of those Well Qualified ratings were unanimous.

While I do not take the position that the ABA ratings are or should be dispositive on judicial nominations, let me remind my colleagues what a Well Qualified rating means. According to guidelines published by the American Bar Association, standing committee on Federal judiciary:

To merit a rating of "well qualified," the nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, breadth of experience, the highest reputation for integrity, and either have demonstrated, or exhibited the capacity for, judicial temperament.

This rating accurately describes the nominees before the Senate. When votes are held, I believe we will find there is bipartisan support for all of the nominees pending before the Senate. Even those who have been previously filibustered have received an affirmative vote of support by a majority of the Senate and have supporters across the political spectrum. Yet they are being held up, for the first time in this country's history, by filibusters.

As further evidence of the qualifications and support of the nominees, I note that 22 nominees were reported out of the Judiciary Committee without a single negative vote. Eighteen district judges were reported by voice vote and with no announced opposition. Four circuit nominees received a 19-to-0 Judiciary Committee vote. I see no reason all cannot expeditiously be acted on by the Senate. That means all of the 22 Judiciary Committee consensus nominees by voice vote or by unanimous consent, and the others, as well.

I have been troubled by the practice in this Congress of demanding time-consuming rollcall votes on nominees who pass unanimously or nearly unanimously. I understand these positions are lifetime appointments, but the Senate acts on many extremely important matters by unanimous consent or by voice vote. I have been told that last year alone we took about twice as many rollcall votes on unopposed judicial nominees than in 8 years under President Clinton. That is just last year.

Like every other Senator, I took an oath to defend and support the Constitution. Every Senator has his or her view on how that responsibility is to be exercised with respect to acting on ju-

dicial nominees. In my view, the Constitution requires the Senate provide its advice and consent regarding the judicial nominees.

Fulfilling my oath means I have a stake in seeing that happen. As chairman of the Judiciary Committee, I have a special role in working with the leadership in seeing the nominees, once reported from the committee, are brought up for floor action. Vote up or down, but just vote. Every judicial nominee who reaches the Senate floor is entitled to an up-or-down vote.

I am hopeful the votes will be held on all judicial nominees presently on the Executive Calendar, as well as for nominees who may yet be reported this year by the Judiciary Committee.

Now, I intend for my remarks today to bring us closer together on considering nominations in the Senate. While I will not fully discuss this matter today, I will note I am not persuaded by arguments that suggest that President Bush's exercise of his constitutional prerogative to make recess appointments somehow justifies this current freeze on nominations. Absent the refusal to allow the simple up-or-down vote on judicial nominees that article II, section 2, clause 2 of the Constitution requires, the recess appointments would not have been made in the first place.

I am mindful that my colleagues across the aisle have also expressed an interest in seeing that minority party nominees to bipartisan boards and commissions be acted upon. For the last several weeks, I have publicly stated on a number of occasions that I understand this concern and that I would support qualified Democratic nominees such as Jon Leibowitz, a former Judiciary Committee staffer of Senator KOHL, to serve as a Commissioner on the Federal Trade Commission. Likewise, I am pleased that the White House is considering a particular Democratic attorney, also a former Judiciary Committee staffer, to serve on the Federal Sentencing Commission.

I hope that significant and mutually satisfactory progress can be made on judges and other nominees. I hope such progress will be made. I know from my experience in this body if we work together we can usually find solutions to these matters, even in an election year.

Senator LEAHY and I and other members of the Judiciary Committee have worked hard on nominations, even as we faced other difficult issues in the committee this year.

I know Senator FRIST and Senator DASCHLE are working hard with the administration, and I wish them well. I simply implore them—each and every one of them—to accelerate the pace of these discussions. But I must also state I believe the time for discussions, negotiations, and talk is drawing to a close. At some point, the Senate must do its sworn duty and vote up or down on judicial nominations. That is just right. It is the right thing to do.

The time for action is quickly coming upon us. Some believe that point

has already passed. To do otherwise is unfair to this institution, unfair to the nominees, unfair to the President, and, most importantly, unfair to the American public who entrusted us with the responsibility to conduct the public business.

Madam President, we can and should do a better job of considering judicial nominees on the Senate floor. I stand ready and willing to continue to work with all of my colleagues and the administration on this important matter.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

### ENERGY POLICY

Mr. REID. Madam President, in Reno, this weekend, the price of a gallon of unleaded gasoline was \$2.22. Premium gasoline costs more than that. The higher blend fuels in Nevada cost about \$2.50 a gallon.

My friend and neighbor from the State of Idaho, the senior Senator from the State of Idaho, was in the Chamber a few minutes ago talking about the fact that if we pass the energy bill that had previously been on the Senate floor, and the one that came back from conference, we would have all of our energy problems resolved. I want to disabuse anyone within the sound of my voice, that simply is not factual.

That energy bill was a bad bill. It did nothing to help the cost of gasoline. The thing it would do is give the industry just what it wants, billions of dollars in the form of subsidies and tax breaks, with no real conservation requirements.

We want an energy bill. We, the minority, want an energy bill. But we want an energy bill that will diversify our energy supply, reduce our Nation's dependence on foreign oil, and protect the environment.

The one thing the bill did not have in it that came back from conference was ANWR. That was at least something of which we were able to convince people of good will around here: The fact that the United States has, at its fingertips, less than 3 percent of the oil reserves of the world, recognizing that we cannot drill our way out of our problems. And that includes the oil that is supposedly in the ground in Alaska. We cannot produce our way out of our problems. Almost 97 percent of the oil reserves in the world are someplace else. So we have to do things that are smart and not only look to the short term but to the long term.

There is no doubt that the price of crude has contributed to the higher gasoline prices in Nevada and throughout the rest of the country these last

few years. But the outrageous 55-cent-per-gallon increase in Nevada, since January, has not been driven by the rising cost of crude oil only, but I believe by corporate greed and profit. These oil companies and refiners are getting rich, and middle-class families are getting gouged.

The stalled energy bill will do nothing to reduce the high price of gasoline because it fails to either improve regulations on an oil industry that is over-concentrated or rein in demand by adopting tougher fuel economy standards. Instead, the legislation proposes just what the industry wants—I repeat, giving billions of taxpayers' dollars to large oil companies in the form of subsidies and tax breaks, with no conservation requirement whatsoever.

The Bush administration's own analysis concludes that the legislative incentives to reduce our reliance on foreign oil in the bill will have only a negligible success. The administration report concludes that implementation of the energy bill would reduce net petroleum imports by about 1.2 percent in 21 years—a reduction hardly worth the billions of dollars taxpayers would give away to the oil companies.

We must also pressure the Saudis to increase production instead of cutting it back by a million barrels per day. I have said on this floor previously that Saudi Arabia and the OPEC nations can do a great deal to relieve the problems we have. They are our allies. That is something that I am not too sure exists. It is a one-way street with them. But I was pleased to hear that Saudi Arabia has said they will recommend at the next OPEC nations meeting to increase production by at least 1.5 million barrels a day. That is nice because they just cut back production by a million barrels of oil a day.

We need to be releasing oil from the Strategic Petroleum Reserve to drive down prices. We have to stop putting extra oil in the Reserve, for which we are paying an arm and a leg.

In terms of meeting the Nation's energy needs, we should increase the use of alternative fuels and renewable energy resources. That is the thing we can do to take a bite out of big oil. We can rely more on the Sun, the wind, geothermal, even biomass.

So I was encouraged that in the FSC bill the Finance Committee put in energy incentives, including the section 45 production tax credits for renewable energy. That will allow us to use the things that are renewable like the Sun, wind, and, of course, geothermal heat.

So I applaud Senators GRASSLEY and BAUCUS for having this section 45 production tax credit for renewable energy resources that expands and extends the credit for these issues that I have talked about, these renewable resources.

Renewable energy will protect consumers and create jobs. It is important to stop declaring our energy independence when that is not the case. I do not think it serves any purpose to come

out and talk about how great this bill is that failed. If it were that great, it would not have failed. It is a bill that does nothing to solve the energy needs of this country.

One of the big issues in that bill, of course, was the fact that this substitute fuel that had been manufactured around the country, MTBE—what the bill proposed is that you just simply forget the fact that companies that used MTBE polluted the ground, and that people have suffered from it.

No one knows of a better example of that than what took place in Utah, Nevada, and California. MTBE polluted the water systems there. These companies have had to respond in damages as a result of litigation filed by the water entities in that area. So what this bill would have done is taken away the right of these entities, such as in the Lake Tahoe area, to seek recourse for the damages caused by these chemicals to the water supply.

So the bill that was before the Senate, and the conference report that was defeated, was a bad bill. It was a bill that was a sop to the car manufacturers and the oil companies. That bill would have done nothing to solve the energy problems of this country.

The legislation we will be asked to work on this week, the FSC/ETI bill, has something that will help the long-term needs of the country. I hope we don't become righteously indignant as my friend did—for whom I have the greatest respect. He is a fine man, and we have worked together on a number of issues dealing with western land problems. The fact is, passing the bill that came before us, that was defeated because there weren't enough votes to go forward on the conference report, was some of the best action the Senate has ever taken. If we want to respond to the energy needs of the country, we need to do things that really help the consumers and not big oil and big auto manufacturers.

I was stunned to learn that New Yorker magazine has come out today with a story by a man named Hirsch that talks about some of the things going on in the torture chambers in Iraq, not the torture chambers that were there and run by Saddam Hussein but torture chambers that were there—I am embarrassed, humiliated, and disappointed to say—and were run by Americans. He talked about the story on public radio today, and this is a message that I understand and I think all Americans have to understand: We can't have a few enlisted people, as we refer to them—no longer draftees; everyone is enlisted—nonofficers, take the fall for what went on there. He talked about the reason pictures were taken, both the videos and stills.

I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. They were going to be used to show the prisoners' families and neighborhoods. That is why they